IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.776 OF 2005
IN
NOTICE OF MOTION NO.2075 OF 2004
IN
SUIT NO.2038 OF 2004

Kiran H. Ghaswalla .. Appellant

v/s.

Mrs.Mariambai Adamji Kadarbhai
Poonawala & ors. .. Respondents

Mr.P.K.Samdani with Mr.V.K.Merchant i/by M/s.Kishore Thakordas & Co. for the appellant.

Mr.S.H.Doctor, Senior Counsel with Mr.A.S.Doctor i/by M/s.Federal & Rashmikant for the respondents.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 8th December, 2005

P.C.

After having heard Mr.P.K.Samdani, the learned counsel for the appellant and Mr.S.H.Doctor, the learned Senior Counsel for the respondents, we are satisfied that the appeal deserves to be admitted and disposed of finally at this stage. As there was broad agreement to the order that follows, we do not deem it necessary to deal with facts and record reasons therefor.

ORDER

(i) The appellant (original plaintiff) shall deposit a sum of Rs.1,00,00,000/- (Rs.one crore only) with the Prothonotary & Senior Master of this court within

four months from today.

(ii) Upon deposit of the aforesaid sum, the plaintiff shall be entitled to negotiate with the tenants and develop the property.

(iii) Any development in the subject property by the plaintiff shall be subject to the final decision in the suit. Such development in the property by the plaintiff shall not create any equity in his favour and in the event of the dismissal of the suit, the plaintiff shall have no right of any nature whatsoever in the property and the development made by him and the property shall be handed over to the defendants as it is. It is also made clear that the plaintiff shall have no claim against the defendants in respect of any settlement between the plaintiff and the tenants.

(iv) Once the amount of Rs.1,00,00,000/- (Rs.one crore) is deposited by the plaintiff, the defendants shall be restrained from interfering with the negotiations that the plaintiff may have with the tenants and the development of the property.

(v) For a period of four months now and if the amount of Rs.1,00,00,000/- (Rs.one crore) as directed above is deposited by the plaintiff in time, the defendants shall be restrained from transferring, alienating or disposing of the subject property to any third party.

(vi) Upon deposit of the sum of Rs.1,00,00,000/- (Rs.one crore), the liability to pay taxes in respect of said property shall be on the plaintiff and the plaintiff shall also be entitled to recover rent from the tenants. As and when property taxes are paid by the plaintiff, the copy of the receipt thereof shall be forwarded by the plaintiff to the defendants.

(vii) The amount of Rs.1,00,00,000/- (Rs.one crore) so deposited by the plaintiff may be withdrawn by the defendants on furnishing bank guarantee to the satisfaction of the Prothonotary & Senior Master. The said bank guarantee shall be kept alive until the final decision in the suit. The defendants shall bring back the sum of

Rs.1,00,00,000/- (Rs.one crore), if required ultimately by the court and pay to the plaintiff the interest on the said sum at such rate and for the period that may be directed by the court.

(viii) In case the sum of Rs.1,00,00,000/- (Rs.one crore) is not deposited by the plaintiff within four months from today, the permission granted to the plaintiff to negotiate with the tenants and develop the property shall stand recalled and the order passed by the learned motion Judge on 5th May, 2005 shall remain operative until the disposal of the suit.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)